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TOMORROWNOW, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ORACLE USA, INC., et al.,  
Plaintiffs,  
v.  
SAP AG, et al.,  
Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DECLARATION OF JASON  
MCDONELL IN SUPPORT OF  
DEFENDANTS' MOTIONS IN LIMINE**

Date: September 30, 2010  
Time: 9:00 am  
Place: 3rd Floor, Courtroom 3  
Judge: Hon. Phyllis J. Hamilton

1 I, JASON MCDONELL, declare as follows:

2 I am a partner in the law firm of Jones Day, 555 California Street, 26th Floor, San  
3 Francisco, CA 94104 and counsel of record for Defendants SAP AG, SAP America, Inc. and  
4 TomorrowNow, Inc. (collectively, "Defendants") in the above-captioned matter. I am a member  
5 in good standing of the State Bar of California and admitted to practice before this Court. I make  
6 this declaration based on personal knowledge and, if called upon to do so, could testify  
7 competently thereto.

8 1. Defendants' expert Brian S. Sommer served an expert report rebutting portions of  
9 the report of Plaintiffs' expert Paul K. Meyer. During the course of discussions between the  
10 Parties and, as Exhibit G recounts, the parties agreed that experts would be prepared to provide  
11 sur-rebuttal testimony at their depositions. Plaintiffs designated no other individual other than  
12 Meyer to rebut Sommer's Report.

13 2. During his deposition, Meyer produced a document, Defendants' Exhibit 2017 that  
14 purports to identify the causes of action in the Complaint and the damages that he has calculated  
15 and how the two relate. However, Exhibit 2017 does not quantify the alleged harm to Plaintiffs'  
16 goodwill.

17 3. Attached as **Exhibit A** is a true and correct copy of the following excerpts from  
18 the February 23, 2010 Supplemental Expert Report of Paul K. Meyer: Cover page and ¶¶ 20  
19 (Table 1), 121, 121 n.302, 129, 355, 433 (Table 16).

20 4. Attached as **Exhibit B** is a true and correct copy of the following excerpts from the  
21 May 13, 2010 Paul K. Meyer Deposition: 332, 440:1-441:7.

22 5. Attached as **Exhibit C** is a true and correct copy of the following excerpts from  
23 the May 12, 2010 Paul K. Meyer Deposition: 1, 37:19-41:17, 56:23-57:15, 255:9-260:25.

24 6. Attached as **Exhibit D** is a true and correct copy of the following excerpts from  
25 the August 18, 2009 Transcript of Proceedings (D.I. 426): 1, 38:18-25, 41:18-24, 43:11-22.

26 7. Attached as **Exhibit E** is a true and correct copy of the following excerpts from  
27 Plaintiffs' Proposed Jury Instructions: Cover page and Instructions Nos. 35-36, 46-49, 52, 60.  
28

8. Attached as **Exhibit F** is a true and correct copy of the following excerpts from the May 5, 2010 Transcript of the Hearings on the Parties' Motions for Partial Summary Judgment: 1, 49-50.

9. Attached as **Exhibit G** is a true and correct copy of the January 25, 2010 email exchange between Holly House and me.

10. Attached as **Exhibit H** is a true and correct copy of the following excerpts from the May 14, 2010 Paul K. Meyer Deposition: 648, 828:11-22, 829:12-831:8, 856:25-857:18, 934:13-19.

11. Attached as **Exhibit I** is a true and correct copy of the following excerpts from Plaintiffs' October 2, 2009 Initial Expert Disclosures: 1-4.

12. Attached as **Exhibit J** is a true and correct copy of the following excerpts from Plaintiffs' October 16, 2009 Supplemental Expert Disclosures: 1-4.

13. Attached as **Exhibit K** is a true and correct copy of the Declaration of Norm Ackermann filed on March 3, 2010 in redacted form as D.I. 650.

14. Attached as **Exhibit L** is a true and correct copy of the following excerpts from ORCLX-PIN-000108 marked as Defendants' Deposition Exhibit 2052: 1, 3.

15. Attached as **Exhibit M** is a true and correct copy of the following excerpts from the May 19, 2010 Paul C. Pinto Deposition: 1, 51:5-52:16, 52:21-53:10, 56:20-57:2.

16. Attached as **Exhibit N** is a true and correct copy of the following excerpts from the Expert Report of Kevin Mandia: Cover page and ¶¶ 112-113, 120-121, 270 n.130, 280 n.139.

17. Attached as **Exhibit O** is a true and correct copy of the following excerpts from the December 2, 2009 John Ritchie Deposition: 1, 169:5-170:7.

18. Attached as **Exhibit P** is a true and correct copy of the following excerpts from the May 21, 2010 Kevin Mandia Deposition: 291, 379:6-16, 383:16-384:22.

19. Attached as **Exhibit Q** is a true and correct copy of the following excerpts from the July 21, 2010 Deposition of Seth Ravin: 276, 332:3-339:13, 366:14-368:21.

20. Attached as **Exhibit R** is a true and correct copy of the following excerpts from the May 21, 2009 Deposition of Seth Ravin: 1, 252:22-257:14.

21. Attached as **Exhibit S** is a true and correct copy of Docket Item 1 in the matter of *Oracle USA, Inc. v SAP AG, et al.*, No. 2:09-cv-01591-KJD-GWF (D. Nev.).

22. Attached as **Exhibit T** is a true and correct copy of Docket Item 38 in the matter of *Oracle USA, Inc. v SAP AG, et al.*, No. 2:09-cv-01591-KJD-GWF (D. Nev.).

23. Attached as **Exhibit U** is a true and correct copy of Texas Articles of Incorporation of a Business Corporation for TomorrowNow, Incorporated, filed in the Office of the Secretary of State of Texas.

24. Attached as **Exhibit V** is a true and correct copy of *E.E.O.C. v. Lennar Homes of Ariz.*, CV-03-1827-PHX-DGC, 2006 U.S. Dist. LEXIS 42865 (D. Ariz. June 23, 2006 ).

25. Attached as **Exhibit W** is a true and correct copy of *Hanger Prosthetics & Orthotics, Inc. v. Capstone Orthopedic, Inc.*, No. 2:06-cv-2879-GEB-KJM, 2008 U.S. Dist. LEXIS 91373 (E.D. Cal. June 13, 2008).

26. Attached as **Exhibit X** is a true and correct copy of *Informatica Corp. v. Business Objects Data Integration, Inc.*, No. C 02-03378 EDL, 2007 U.S. Dist. LEXIS 16247 (N.D. Cal. Feb. 23, 2007).

27. Attached as **Exhibit Y** is a true and correct copy of *Powell v. Houston Helicopters, Inc.*, No. 90-3070 § "I"(6), 1992 U.S. Dist. LEXIS 1052 (D. La. Jan. 23, 1992).

28. Attached as **Exhibit Z** is a true and correct copy of *Sharer v. Tandberg, Inc.*, No. 1:06-cv-626, 2007 WL 983849 (E.D. Va. Mar. 27, 2007).

29. Attached as **Exhibit AA** is a true and correct copy of *Therasense, Inc. v. Becton, Dickinson & Co.*, No. C 04-02123 WHA, 2008 WL 2323856 (N.D. Cal. May 22, 2008).

30. Attached as **Exhibit BB** is a true and correct copy of *United States v. Smith*, 199 Fed. App'x. 759, 761, 763-64 (11th Cir. September 15, 2006).

31. Attached as **Exhibit CC** is a true and correct copy of 1 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 36 (Sept. 2009).

1 I declare under penalty of perjury under the laws of the United States and the State of  
2 California that the foregoing is true and correct.

3 Executed this 5th day of August, 2010 in San Francisco, California.

4  
5 /s/ Jason McDonell  
Jason McDonell